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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Docket No. P26818

Robert RICCI et al.

Appln. No.: 10/624,650

Group Art Unit: No. 3721

Filed: July 23, 2003

Examiner: L. Huynh

For: **DELIVERY POINT PACKAGER TAKEAWAY SYSTEM AND METHOD**

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This request is being filed concurrently with a Notice of Appeal and a Request for One-month Extension of Time in order to extend the period for response for the Final Official Action of June 16, 2005 from September 16, 2005 to October 17, 2005 (October 16, 2005 being a Sunday).

Reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) made in the Final Office Action is respectfully requested in view of the following remarks.

**A PRIMA FACIE CASE OF UNPATENTABILITY HAS NOT BEEN SET FORTH AND
THE REJECTION UNDER 35 U.S.C. § 103(a) IS IMPROPER AND SHOULD BE
WITHDRAWN**

1. Preliminary Matters

In a telephone interview with Examiner Huynh, it was agreed that the formal rejection of claims 16 and 17, as presented at the time of the Final Office Action, was overcome by Applicants' remarks. Thus, Applicants submit that the non-entry of the amendment to claims 16 and 17 is of no consequence, and this Pre-Appeal Brief Request is made with claims 16 and 17 as presented at the time of the Final Office Action.

2. Neither Applied Document Shows the Recited Conveying System/Mean for Incrementally Moving the Container

Applicants note that independent claim 1 recites, *inter alia*, a conveying system downstream from the clamping device, the *conveying system moving a drop off tray incrementally*, and independent claim 11 recites, *inter alia*, means for incrementally moving the takeaway container a predetermined distance such that the individual packages can fill the takeaway container prior to a new takeaway container being positioned for filling. Applicants submit that the applied art fails to show at least the above-noted features.

As acknowledged by the Examiner in the Final Office Action, "Golicz et al. [U.S. Patent No. 4,617,784] does not disclose that the conveying system moves a drop-off tray incrementally, such that the drop-off tray is in position to stack a multiple packaged sequenced products of the plurality of packaged sequenced products as the drop-off tray is moved." See Final Office Action, page 3, section 4, and paragraph 2. Accordingly, no further discussion of Golicz is believed necessary on this point.

In an effort to overcome the admitted defect of Golicz, the Examiner asserts that Oldenthal (U.S. Patent No. 5,588,285) teaches a packaging device having a conveying system moving a drop off tray incrementally. However, contrary to the Examiner's assertions, Applicants note that, when the contain 4 is being loaded with packages 1, the container conveyor 9 of Oldenthal moves continuously at a constant low speed.

Between containers 4, container conveyor 9 is moved at a constant high speed. Thus, Applicants submit that Oldenthal operates at one of a high or low speed, and that there is no disclosure of moving the container 4 incrementally, as recited in at least independent claims 1 and 11, because each package is the same size as every other package.

Because neither document shows at least the above-noted features, Applicants submit that the instant combination of documents cannot render unpatentable the instant invention.

3. Neither Applied Document Shows the Recited Clamping Device

Applicants note that independent claim 1 recites, *inter alia*, a clamping device *adjacent to the output end of the packaging device*, in which the *clamping device holds one of a plurality of packaged sequenced products* such that the drop off tray is in a position to stack multiple packaged sequenced products of the plurality of packaged sequenced products into the drop off tray as the drop off tray is moved, incrementally.

While the Examiner asserts that Golicz shows such a clamping device, as recited in at least independent claim 1, Applicants submit that Golicz fails to show such a clamping device that holds a packaged sequenced product as a drop-off tray is moved incrementally. As also recited in at least independent claim 1, Golicz fails to disclose the clamping device of the instant invention.

Moreover, Applicants note that Oldenthal likewise fails to show a clamping device to hold the packaged product as the container is moved. In this regard, Applicants note that the product of Oldenthal is continuously moved, such that there is no disclosed clamping.

Because neither document shows at least the above-noted features of Applicants' recited clamping device, Applicants submit that the instant combination of documents cannot render unpatentable the instant invention.

4. Neither Applied Document Shows the Positioning of the Recited Clamping Device

Applicants note that independent claim 1 recites, *inter alia*, a clamping device

adjacent to the output end of the packaging device, which is not shown in either applied document.

Applicants note that the Examiner has not asserted, nor can he, that Oldenthal shows a clamping device, as recited in at least independent claim 1, since this document shows continuous conveyance of product into container without any clamping of product as it is conveyed into the containers.

Further, Applicants note that, while the Examiner has identified elements 30 and 34 of Golicz as a clamping device, Applicants note that these elements are not adjacent to the output end of the packaging device. In particular, Applicants note that Figure 2 shows a bundle of tags between strips 30 and two additional bundles of tags vertically below the above-noted bundle. As the additional bundles (not between the strips) are still within the packaging portion of Golicz, Applicants submit that the upstream elements of 30 and 34 cannot be considered as being located in *an output end*, as recited in Applicants' claims.

Because neither document shows at least the above-noted features regarding the positioning of Applicants' recited clamping device, Applicants submit that the instant combination of documents cannot render unpatentable the instant invention.

CONCLUSION

Reconsideration of the Final Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,
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